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Attorneys for Defendants William Tull, Daniel Gibby and
Gibby Novelties, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual

Plaintiff,

vs.

WILLIAM TULL; DANIEL GIBBY;
GIBBY NOVELTIES, LLC dba ARSENIC
& APPLE PIE, a California Limited
Liability Corporation and DOES 1 through
20, inclusive,

Defendants.

And Related Counter-Claim of Tull

) CASE NO. C 07 3947 SI

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SUPPLEMENTAL DECLARATION OF DAVID
Y. WONG IN SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

April 25, 2008

9:00 a.m.

Judge Illston, Courtroom 10

The Federal Building

450 Golden Gate Avenue

San Francisco, CA 94102

Complaint filed: August 1, 2007

I, David Y. Wong, declare:

1. I am an attorney licensed by the State of California, admitted to practice before this
Court since 1982, and I am co-counsel for Defendants William Tull, Daniel Gibby and

MONTWILLO V. TULL, ET AL. USDC Action No. C 07 3947 SI

SUPPLEMENTAL DECLARATION OF DAVID Y. WONG IN SUPPORT OF OPPOSITION TO PLAINTIFF'S

MOTION FOR SUMMARY JUDGMENT

1 Gibby Novelties, LLC. I am authorized by my clients to make this Declaration in support of their
2 Motion for Summary Judgment, filed herewith;

3 2. From March 21, 2008, until the date of this Declaration, April 4, 2008, Your Declarant
4 states and attests to the fact that I have not been served with a hard copy of Plaintiff's Motion
5 for Summary Judgment, Memorandum of Points and Authorities, the Declaration of Mr.
6 Sommers or the Declaration of Plaintiff Paul Montwillo, whether delivered by mail, facsimile,
7 messenger or overnite service. My office receives, and has received daily mail service from the
8 Postal Service and I have personal knowledge of all mail delivered during the time frame above;

9 3. On or about March 21, 2008, I received an electronic notice from the Court of the filing of
10 a Motion for Summary Judgment filed by Plaintiff. At that time, I downloaded a copy of Plaintiff's
11 Memorandum of Points and Authorities and the Declaration of Stephen Sommers in support of
12 Plaintiff's Motion for Summary Judgment. I note that Montwillo's Declaration was not listed as
13 filed in the Court's electronic notices of March 21. Instead, I received notice of its manual filing
14 on March 24, 2008;

15 4. On March 24, 2008, I received an electronic notice from the Court of Plaintiff's Failure to
16 File the Declaration of Paul Montwillo in accordance with Local Rule 5-4 and General Order 45.
17 Said Notice indicated that the Declaration of Montwillo had been filed manually, on paper and
18 provided 10 days in which to cure the error;

19 5. I state unequivocally that from March 21 until the close of business on April 3, I never
20 received a copy of the Declaration of Paul Montwillo in support of his Motion for Summary
21 Judgment. I not receive it in any form until the evening of April 3, 2008, after I had prepared and
22 filed Defendants' Opposition to Plaintiff's Motion for Summary Judgment. At that time, Counsel
23 for Plaintiff sent a copy to me by e-mail. As of the date of this Declaration, I have still yet to
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28 MONTWILLO V. TULL, ET AL. USDC Action No. C 07 3947 SI

SUPPLEMENTAL DECLARATION OF DAVID Y. WONG IN SUPPORT OF OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

1 receive in hard copy the Declaration of Paul Montwillo in support of Plaintiff's Motion for
2 Summary Judgment;

3 6. From March 24 to the present, I am unaware of whether Plaintiff has complied with the
4 Court's General Order 45, Section III regarding Montwillo's Declaration by e-mailing a copy in
5 10 days to the Judge's chambers. If this has taken place, I was not copied on the
6 communication or otherwise advised of the event. To my understanding, Plaintiff has failed and
7 refused to submit his Declaration in the proper format to the Court within the 10 days provided,
8 which period elapsed on April 3, 2008;

9 7. It is my understanding that Counsel of Record, as officers of the court, are charged with
10 the affirmative duty of complying with all local court rules and the Federal Rules of Civil
11 Procedure, especially relating to the filing and service of motion papers with the Court and
12 opposing counsel.
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15 I certify under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct and that I am able to testify competently thereto.

17 Executed in Mill Valley, California on April 4, 2008.

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David Y. Wong